

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

B.W.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:18-CV-1025 HEA
)	
CITY OF ST. LOUIS, MISSOURI, et al.,)	
)	
Defendants.)	

PLAINTIFF’S STATEMENT OF UNDISPUTED MATERIAL FACTS

COMES NOW Plaintiff B.W. (“Plaintiff”), and pursuant to Rule 56(c)(1) of the Federal Rules of Civil Procedure and Local Rule 7-4.01(E), and hereby sets forth the following undisputed material facts in support of her Motion for Summary Judgment on Count I of Plaintiff’s First Amended Complaint against Defendant John Stewart (“Defendant Stewart”). In support of this Motion, Plaintiff submits concurrently herewith her Statement of Uncontroverted Material Facts and Memorandum in Support and Plaintiff states to this Honorable Court as follows:

UNCONTROVERTED MATERIAL FACTS

1. Defendant Stewart, at all times relevant herein, was a City of St. Louis police officer working under the direction and control of the City of St. Louis. (Established by the Record – *See* Pl. Compl. ¶ 5 (Doc. #24) and Def. Ans. ¶ 5 (Doc. #29))¹.
2. On the evening of June 12, 2015, Plaintiff’s estranged husband suddenly took the family vehicle from Plaintiff’s residence and left. (Established by the Record – *See* Affidavit of Plaintiff B.W. – Exhibit 1 [hereinafter “Pl. Aff. – Ex. 1”], ¶ 2).

¹ The Complaint referenced is Plaintiff’s First Amended Complaint.

3. Plaintiff called the Saint Louis Metropolitan Police Department to report the incident with her estranged husband. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 3).

4. On the night of June 12, 2015, Plaintiff lived in a home in the City of St. Louis along with her four children. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 4).

5. Defendant Stewart responded to Plaintiff’s call to the Saint Louis Metropolitan Police Department and arrived at her residence. (Established by the Record – *See* Pl. Compl. ¶ 15, Def. Ans. ¶ 15 and Pl. Aff. – Ex. 1, ¶ 5).

6. Upon arriving at Plaintiff’s residence, Defendant Stewart entered Plaintiff’s house and began talking with Plaintiff. (Established by the Record – *See* Pl. Compl. ¶ 16, Def. Ans. ¶ 16 and Pl. Aff. – Ex. 1, ¶ 6).

7. After Plaintiff described the situation about her estranged husband taking the family vehicle, Defendant Stewart asked Plaintiff, “Are you freaky?” (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 7 and Deposition of Defendant John Stewart – Exhibit 2 [hereinafter “Stewart depo. – Ex. 2”], TR. 9:6-12²).

8. Defendant Stewart then indicated that he wanted Plaintiff to perform oral sex on him. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 8 and Stewart depo. – Ex. 2, TR. 9:20-10:2³).

9. Defendant Stewart then demanded Plaintiff perform oral sex on him. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 9 and Stewart depo. – Ex. 2, TR. 11:17-23⁴).

² Defendant Stewart refused to answer the question relating to this material fact and asserted his Fifth Amendment right to remain silent. A negative inference shall be drawn as more fully discussed in Plaintiff’s Memorandum in Support.

³ Id.

⁴ Id.

10. Plaintiff was in fear of Defendant Stewart and afraid of what he might do if Plaintiff didn't do what he demanded. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 10).

11. At the time of this incident, Plaintiff's four children were sleeping in her home. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 11).

12. Plaintiff feared for her safety and her life. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 12).

13. Plaintiff performed oral sex on Defendant Stewart against her will. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 13 and Stewart depo. – Ex. 2, TR. 11:24-12:12; 12:21-13:3⁵).

14. After this act, Plaintiff vomited into a towel. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 14).

15. Plaintiff then called her mother and reported the incident to the police department. (Established by the Record – *See* Pl. Aff. – Ex. 1, ¶ 15).

16. On April 5, 2018, a grand jury indictment was filed against Defendant Stewart in the St. Louis City Circuit Court. (Established by the Record – *See* Grand Jury Indictment – Exhibit 3 [hereinafter “Stewart Indictment – Ex. 3”]).

17. Defendant Stewart has been criminally charged with “the felony of sodomy in the first degree”. (Established by the Record – *See* Stewart Indictment – Ex. 3).

18. Defendant Stewart has been criminally charged with the felony of sodomy in the first degree in that “on or about June 12, 2015, In the city of St. Louis, State of Missouri, the defendant for the purpose of arousing or gratifying the sexual desire of the defendant, knowingly had deviate sexual intercourse with B.W., by the use of forcible compulsion.” (Established by the Record – *See* Stewart Indictment – Ex. 3).

⁵ *Id.*

WHEREFORE, based on the foregoing facts and the reasons stated in Plaintiff's Motion for Summary Judgment and Memorandum in Support, Plaintiff respectfully requests this Honorable Court to grant her Motion for Summary Judgment on Count I of her First Amended Complaint against Defendant John Stewart and requests a jury determination on damages, and for such other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2019, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Thomas J. Magee
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Attorney for Defendant
John Stewart

s/James W. Schottel, Jr.